

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUZANNE RENEE BILLOTTI,

Plaintiff,

Case No. 13-11996

v.

HONORABLE AVERN COHN

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 20)
AND
GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO A REMAND
(Doc. 13)
AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Doc. 18)
AND
REMANDING MATTER FOR FURTHER ADMINISTRATIVE PROCEEDINGS

I.

This is a Social Security case. Plaintiff Suzanne Renee Billotti, proceeding pro se, appeals from the final determination of the Commissioner of Social Security (Commissioner) that she is not disabled and therefore not entitled to disability insurance benefits. The matter was referred to a magistrate judge for all pretrial proceedings. Plaintiff and the Commissioner filed cross motions for summary judgment.

On May 19, 2014, the magistrate judge issued a report and recommendation (MJRR), recommending that plaintiff's motion be granted to the extent that the case is remanded for further administrative proceedings and that the Commissioner's motion be denied. Specifically, the magistrate judge recommends that the matter be remanded for

further administrative proceedings under sentence four¹ because of “discrepancies between the hypothetical question forming the basis of the [Vocational Expert’s] job testimony and the [plaintiff’s residual functional capacity].” MJRR at p. 16. These discrepancies make it unclear whether plaintiff is capable of light work or limited to sedentary work. See MJRR at pp. 16-18.

II.

Neither party has filed objections to the MJRR and the time for filing objections has passed. The failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. Thomas v. Arn, 474 U.S. 140, 149 (1985).

However, the Court has reviewed the MJRR and agrees with the magistrate judge. Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court. Plaintiff's motion for summary judgment is GRANTED IN PART AND DENIED IN PART. The Commissioner's motion for summary judgment is DENIED.

¹ “A district court's authority to remand a case for further administrative proceedings is found in 42 U.S.C. § 405(g).” Hollon v. Commissioner, 447 F.3d 477, 482-83 (6th Cir. 2006). The statute permits only two types of remand: a sentence four (post-judgment) remand made in connection with a judgment affirming, modifying, or reversing the Commissioner's decision; and a sentence six (pre-judgment) remand where the court makes no substantive ruling as to the correctness of the Commissioner's decision. Hollon, 447 F.3d at 486 (citing Melkonyan v. Sullivan, 501 U.S. 89, 99-100, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991)).

This matter is REMANDED for further administrative proceedings consistent with the MJRR.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: June 12, 2014

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, June 12, 2014, by electronic and/or ordinary mail.

S/Sakne Chami
Case Manager, (313) 234-5160